



# OREGON CITY

## Community Development – Planning

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### TYPE III STAFF REPORT AND NOTICE OF DECISION *January 3, 2020*

**FILE NUMBER:** GLUA-19-00041 (General Land Use Application), VAR-19-00006, through VAR-19-00009 (Variances)

**HEARING DATE:** January 13, 2020 7:00 p.m.  
City Hall 625 Center Street  
Oregon, City, Oregon 97045

**APPLICANT/OWNER:** Hilltop Mall LLC  
PO Box 2200  
Oregon City, OR 97045

**REQUEST:** The applicant requests a variance for two signs exceeding the maximum number of freestanding signs permitted onsite, and a variance to allow the signs to contain a change in message more than three times per day.

**LOCATION:** 1450 Molalla Avenue Oregon City, Oregon 97045  
Clackamas County Map 3-2E-05C Taxlot 205

**REVIEWER:** Kelly Reid, AICP, Planner

**RECOMMENDATION:** Approval with Conditions

**PROCESS:** Type III decisions involve the greatest amount of discretion and evaluation of subjective approval standards, yet are not required to be heard by the city commission, except upon appeal. Applications evaluated through this process include conditional use permits. The process for these land use decisions is controlled by ORS 197.763. Notice of the application and the planning commission hearing is published and mailed to the applicant, recognized neighborhood association and property owners within three hundred feet of the subject property. Notice must be issued at least twenty days pre-hearing, and the staff report must be available at least seven days pre-hearing. At the evidentiary hearing held before the planning commission, all issues are addressed. The decision is final unless appealed and description of the requirements for perfecting an appeal. The decision of the planning commission is appealable to the city commission within fourteen days of the issuance of the final decision. The city commission hearing on appeal is on the record and no new evidence shall be allowed. Only those persons or a city-recognized neighborhood association who have participated either orally or in writing have standing to appeal the decision of the planning commission. Grounds for appeal are limited to those issues raised either orally or in writing before the close of the public record. A city-recognized neighborhood association requesting an appeal fee waiver pursuant to OCMC 17.50.290.C must officially approve the request through a vote of its general membership or board at a duly announced meeting prior to the filing of an appeal. The city

commission decision on appeal from the planning commission is the city's final decision and is appealable to the Land Use Board of Appeals (LUBA) within twenty-one days of when it becomes final.

**Final Conditions of Approval**  
**Planning File GLUA-19-00041**

- (P) = Verify that condition of approval has been met with the Planning Division.*  
*(DS) = Verify that condition of approval has been met with the Development Services Division.*  
*(B) = Verify that condition of approval has been met with the Building Division.*  
*(F) = Verify that condition of approval has been met with Clackamas Fire Department.*

Planning Division Conditions of approval (the applicant must demonstrate that conditions are met prior to final inspection for a building permit).

1. The applicant shall plant one tree in the eastern corner of the site at the driveway entrance from Molalla Avenue to better screen the signs from Molalla Avenue, and one tree along the southern edge of the drive thru area to better screen the signs from Beaver Creek Road. The tree locations are shown in Exhibit 4. The trees shall be at least 2" caliper and the species shall be selected from the City's native plant list or street tree list. (P)

II. BACKGROUND:

1. Existing Conditions

The site is an existing McDonald's restaurant with a drive-thru and is part of the Hilltop Mall development.

Figure 1. Vicinity Map



Figure 2: Existing Conditions – Aerial Image



## 2. Project Description

The applicant submitted the following project description:

*"The McDonald's that is located at 1450 Molalla Ave Oregon City OR 97045 is respectfully relief from the code that will allow the property the ability to reflect the investment being made into the site and the community as well as improve the overall customer experience. As part of the investment into this location, McDonalds*

is seeking to replace its 2 existing menu boards and 1 existing pre-menu board with new menu boards using new digital technology.

The area that requires relief is as follows:

- Number of drive-through signs and size
  - Allowed: 1 freestanding sign NTE 150 SF, 1 incidental freestanding sign NTE 8 SF
  - Requested: 2
    - 2 Menu Boards at approximately 20SF each
- Replacing 2 existing menu boards at approximately 45SF
- Signs that contain, include or illuminated by flashing, revolving, rotating or moving light or moves or has any animated or moving parts with move or rotate or change more than 3 times a day are prohibited.
  - Requesting 2 menu boards that list a customer's order as they place it, including the total cost.

*The requested signs all serve a purpose that work together to create an overall aesthetic balance as well as help to improve the customer experience. These signs will also help to ensure that motorists can easily navigate the site, entering and exiting quickly, yet safely."*

The applicant proposes two variances for each sign; one for the use of signs that contain flashing or moving images or words that change more than three times per day; and one for the existence of the sign, which is considered a freestanding sign and exceeds the number of freestanding signs permitted on site.

The existing site contains one main freestanding sign along with two menu boards and is already nonconforming. The applicant proposes to remove the two menu boards and replace them with new menu boards of a similar size in the same location.

Figure 3: Proposed Site Plan



Figure 4. Existing Menu Boards



Figure 5. Proposed New Sign



Figure 6. Views From Molalla Avenue and Beavercreek Road





3. **Municipal Code Standards and Requirements:** The following sections of the Oregon City Municipal Code are applicable to this land use approval:

15.28 - Signs

17.50 - Administration and Procedures

The City Code Book is available on-line at [www.orcity.org](http://www.orcity.org).

4. **Permits and Approvals:** The applicant is responsible for obtaining approval and permits from each applicable governmental agency and department at Oregon City including but not limited to the Engineering and Building Divisions.
5. **Notice and Public Comment**  
Notice of the proposal was sent to various City departments, affected agencies, property owners within 300 feet, and the Neighborhood Association. Additionally, the subject property was posted with signs identifying that a land use action was occurring on the property. Public comments submitted include (Exhibit 3):

The Oregon City School District indicated the proposal would not conflict with their interests.

Comments of the Public Works Department and Development Services Division are incorporated into this report and Conditions of Approval.

None of the comments provided indicate that an approval criterion has not been met or cannot be met through the Conditions of Approval attached to this Staff Report.

## I. RESPONSES TO THE OREGON CITY MUNICIPAL CODE:

### CHAPTER 15.28 – SIGNS

#### *15.28.080 Signs in Office Commercial, Mixed Use and Industrial Zones*

*A. General. All of the following standards apply to all signs in office, commercial, mixed use and industrial zones:*

- 1. With the exception of projecting or wall signs, signs shall not project over the right-of-way. Signs projecting into the right-of-way shall receive approval by the city engineer.*
- 2. With the exception of wall signs, signs shall maintain a minimum clearance of ten feet above grade over pedestrian or vehicular areas, and fourteen feet above grade over areas of truck access.*

**Finding: Complies as Proposed.** The proposed signs do not project over any right of way.

*B. Wall Signs. All of the following standards apply to wall signs in office, commercial, mixed use and industrial zones:*

- 1. The number of wall signs is unlimited provided the total combined display area of wall signs, projecting signs and banners does not exceed twenty square feet for each ground floor tenant space on which the sign is constructed. For ground floor tenant spaces exceeding twenty feet of wall length on which the sign is constructed and tenant spaces not on the ground floor, signage shall not exceed one square foot per each lineal foot of the wall length of the tenant space on which the sign is constructed.*
- 2. Signs on structures such as awnings, canopies, false fronts and wall extensions that do not extend more than one foot from the structure are considered wall signs.*

**Finding: Not Applicable.** The signs in question are not wall signs. The above does not apply to this request.

*C. Freestanding Signs. All of the following standards apply to freestanding signs in office, commercial, mixed use and industrial zones:*

- 1. A maximum of one freestanding sign is allowed for each street frontage. On arterial streets, if a frontage exceeds a length of six hundred linear feet a second freestanding sign is allowed. In all cases, no freestanding sign shall be permitted on the same frontage where there is a projecting or roof sign.*

**Finding: See variance findings in 15.28.130.** The site frontage is less than 600 feet; thus one freestanding sign is permitted. The site currently has more than one freestanding sign. The applicant is requesting to replace two existing menu boards with two new, smaller menu boards.

- 2. Freestanding signs on the same frontage shall be separated by a minimum of fifty feet distance.*

**Finding: See variance findings in 15.28.130.** The applicant is requesting to replace two existing menu boards with two new, smaller menu boards. These two signs are not necessarily located on a frontage, and they are not separated by 50 feet.

#### *3. Maximum display area*

- a. Where the street frontage is less than fifty feet in length, the display area shall not exceed fifty square feet and the sign face shall not exceed twenty-five square feet.*
- b. Where the street frontage is fifty feet or greater but less than two hundred feet in length, display area shall not exceed one hundred square feet and the sign face shall not exceed fifty square feet.*
- c. Where the street frontage is two hundred feet or greater in length, the display area shall not exceed three hundred square feet and the sign face shall not exceed one hundred fifty square feet.*



*d. In no case shall any sign have a display area in excess of three hundred square feet.*

**Finding: Complies as Proposed.** The street frontage on Molalla Avenue is approximately 240 feet in length. The applicant did not provide the size of the existing main sign for the business. The proposed new signs are approximately 20SF each; or 4 feet by 5 feet; for a total of 40SF. The proposed signs are one-sided; the proposed size is the size of the sign face.

*4. The sign width shall not exceed twenty linear feet.*

**Finding: Complies as Proposed.** The width of each sign is 4'10".

*5. Where the street frontage is two hundred feet in length or less the sign height shall not exceed twenty-five feet. Where the street frontage is more than two hundred feet in length, the sign height shall not exceed thirty feet.*

**Finding: Complies as Proposed.** The height of each sign is 5' 11 5/8".

*D. Incidental Freestanding Signs. All of the following standards apply to incidental signs in office, commercial, mixed use and industrial zones:*

- 1. A maximum of one incidental freestanding sign is allowed for each street frontage.*
- 2. The display area shall not exceed sixteen square feet and the sign face shall not exceed eight square feet.*
- 3. The sign height shall not exceed 15 feet.*

**Finding: Not applicable.** No incidental signs are being requested. The proposed signs exceed the allowed size of incidental signs and are thus considered freestanding signs.

*15.28.110 - Prohibited signs.*

*It is unlawful for any of the following signs to be constructed or maintained except as otherwise provided in this chapter:*

*B.A sign that contains, includes or is illuminated by any flashing or revolving, rotating or moving light or moves or has any animated or moving parts which move or rotate or change more than three times per day, except as otherwise allowed within this code.*

**Finding: See variance findings in 15.28.130.** The applicant is requesting to utilize two new menu board signs with illuminated areas that will change throughout the day to reflect customers' orders and prices.

*15.28.130 Variances*

*All of the following standards apply to variances to this chapter:*

- A. Grounds for Variance. Upon application by an applicant, the planning commission may grant a specific variance from provisions of this chapter provided all of the following circumstances exist:*

- 1. That the variance from the requirements is not likely to cause substantial damage to adjacent properties by reducing light, air, safe access or other desirable or necessary qualities otherwise protected by this title;*

**Finding: Complies as Proposed.**

**Variances for the Number of Freestanding Signs**

The proposed signs are approximately 5 feet in height and are smaller than the existing signs. They are located at least 90 feet from neighboring buildings. Any impacts to neighboring properties will be reduced by the proposed changes on site.

**Variances for Message Change more than 3x per day**

The requested change will have little to no effect on adjacent properties. The content of the sign will be minimally visible, if at all, from neighboring properties. The reduction in illumination from the new signs is a benefit to adjacent properties as these new signs are not distracting and are tailored to the user.

- 2. That the request is the minimum variance that would alleviate the hardship;*

**Finding: Complies as Proposed.**

**Variances for the Number of Freestanding Signs**

The applicant states: "This request is part of a nationwide campaign by McDonald's to replace their menu boards with state of the art digital boards. These new boards are smaller and give off less illumination.

The site already has 2 menu boards. McDonalds simply wants to replace them with smaller, more effective and efficient menu boards.” While there is no apparent hardship associated with this proposal, staff finds that because the applicant is not increasing the overall number of signs on site, this criterion is met.

**Commented [KR1]:** Get clarification on pre-menu boards

#### Variances for Message Change more than 3x per day

The proposal would result in a sign that changes every time a new order is placed. The applicant states “The menu portion of the sign will only change twice daily, once from breakfast to lunch/dinner and then back to breakfast. The portion of the sign that will change more than 3 times is a very small area. This area is specifically designed for only the user of the sign. This area will list the user’s order as well as the total cost. This will only be visible to the user as their vehicle will be in front of the board. The order will not be visible to anyone else.” Staff finds that the applicant has minimized the areas of the sign that will have a changing message.

*3. Granting the variance will equal or exceed the purpose of the regulation to be modified;*

#### **Finding: Complies as Proposed.**

#### Variances for the Number of Freestanding Signs

The purpose of the regulation limiting the number of freestanding signs is to eliminate sign clutter. The proposed menu board signs are not oriented to the street as advertising, like most signs; instead, they are directed at the existing drive through facility. The applicant states “The new signs serve the same purpose, but are smaller, more concise and easier for the consumer to use. This is a significant decrease in overall sign square footage. Additionally, these signs do substantially not alter the appearance of the site. The new menu boards will be in the same location as the existing signs. The modification of the existing antiquated display with the new digital technology will only impact the direct user of the product. This user has made the choice to enter onto the commercial property and expects the transaction that they are seeking to be able to be accomplished in an expedited and concise manner. In addition, this corridor is primarily commercial in nature and modifications that will allow for services offered at these types of properties should be supported and approved.” Staff finds that the reduction in size of the signs will help to minimize clutter, and recommends mitigation to better screen the signs from the right of way.

#### Variances for Message Change more than 3x per day

The purpose of the regulation is to avoid signs that are distracting to drivers and to maintain an aesthetically pleasing streetscape. The proposal would result in a sign that changes every time a new order is placed. The applicant states “The menu portion of the sign will only change twice daily, once from breakfast to lunch/dinner and then back to breakfast. The portion of the sign that will change more than 3 times is a very small area. This area is specifically designed for only the user of the sign. This area will list the user’s order as well as the total cost. This will only be visible to the user as their vehicle will be in front of the board. The order will not be visible to anyone else.” Staff finds that the message changes will be minimally visible from the right of way, if at all, and will not cause distractions to drivers or impact the streetscape.

*4. Any impacts resulting from the adjustment are mitigated;*

#### **Finding: Complies with Condition.**

#### Variances for the Number of Freestanding Signs

Staff finds that the reduction in size of the signs will help to minimize clutter, but the number of signs will still create more visual clutter than if the applicant met the standards. Thus, mitigation to screen the signs from the right of way is recommended. The applicant shall plant one tree in the eastern corner of the site

at the driveway entrance from Molalla Avenue to better screen the signs from Molalla Avenue, and one tree along the southern edge of the drive thru area to better screen the signs from Beavercreek Road. The tree locations are shown in Exhibit 4. The trees shall be at least 2" caliper and the species shall be selected from the City's native plant list or street tree list.

Variances for Message Change more than 3x per day

The proposal would result in a sign that changes every time a new order is placed. The applicant states "The menu portion of the sign will only change twice daily, once from breakfast to lunch/dinner and then back to breakfast. The portion of the sign that will change more than 3 times is a very small area. This area is specifically designed for only the user of the sign. This area will list the user's order as well as the total cost. This will only be visible to the user as their vehicle will be in front of the board. The order will not be visible to anyone else." Staff finds that the message changes will be minimally visible from the right of way, if at all, and will not cause distractions to drivers or impact the streetscape. Thus, no mitigation is required.

**Staff has determined that it is possible, likely and reasonable that the applicant can meet this standard through the Conditions of Approval.**

*5. No practical alternatives have been identified which would accomplish the same purpose and not require a variance; and*

**Finding: Complies as Proposed.**

Variances for the Number of Freestanding Signs

The applicant states "There are no alternatives. This is a nationwide initiative by McDonald's to replace existing menu boards with these smaller digital menu boards."

Variances for Message Change more than 3x per day

The applicant states "There are no alternatives. This is a nationwide initiative by McDonald's to replace existing menu boards with these smaller digital menu boards."

*6. The variance conforms to the comprehensive plan and the intent of the ordinance being varied.*

**Finding: Complies as Proposed.** The Comprehensive Plan does not contain any goals or policies that are specific to signs. The applicant provided the following responses regarding comprehensive plan section 2: Land Use.

**Goal 2.3 – Corridors**

The proposal for this site is in line with the goal set forth in the code. The proposal for new, smaller menu boards that use digital technology will help the site and its consumers. The boards are smaller, easier to read, more aesthetically pleasing and give off less illumination. The new boards will help move customers through the site quickly and safely, leading to a better overall customer experience.

**Goal 2.5 – Retail and Neighborhood Commercial**

The proposal for this site is in line with this goal set forth in the code. The proposal will help the business expand its customer base by allowing customers to get through the drive thru lane quicker and safer. By doing so the traffic movement will be faster as people will spend less time in the drive thru lanes. The new boards also improve the area aesthetically as the boards are smaller and give off less illumination.

*B. Variance Fee. At the time of application for variance from the provisions of this chapter, the applicant shall pay a fee in accordance with the fee schedule established and amended from time to time by the city commission and on file with the city recorder.*

*C. Procedure. A variance application shall be treated in the manner provided by [Chapter 17.50](#) of this code with respect to zoning variances.*

**Finding: Complies as Proposed.** The applicant has submitted the required fees.

#### **CHAPTER 17.50 - ADMINISTRATION AND PROCEDURES**

##### *17.50.050 Preapplication Conference*

*A. Preapplication Conference. Prior to submitting an application for any form of permit, the applicant shall schedule and attend a preapplication conference with City staff to discuss the proposal. To schedule a preapplication conference, the applicant shall contact the Planning Division, submit the required materials, and pay the appropriate conference fee. At a minimum, an applicant should submit a short narrative describing the proposal and a proposed site plan, drawn to a scale acceptable to the City, which identifies the proposed land uses, traffic circulation, and public rights-of-way and all other required plans. The purpose of the preapplication conference is to provide an opportunity for staff to provide the applicant with information on the likely impacts, limitations, requirements, approval standards, fees and other information that may affect the proposal. The Planning Division shall provide the applicant(s) with the identity and contact persons for all affected neighborhood associations as well as a written summary of the preapplication conference. Notwithstanding any representations by City staff at a preapplication conference, staff is not authorized to waive any requirements of this code, and any omission or failure by staff to recite to an applicant all relevant applicable land use requirements shall not constitute a waiver by the City of any standard or requirement.*

*B. A preapplication conference shall be valid for a period of six months from the date it is held. If no application is filed within six months of the conference or meeting, the applicant must schedule and attend another conference before the city will accept a permit application. The community development director may waive the preapplication requirement if, in the Director's opinion, the development does not warrant this step. In no case shall a preapplication conference be valid for more than one year.*

**Finding: Complies as Proposed.** A Pre-application conference was held on 7/9 via conference call.

##### *17.50.055 Neighborhood Association Meeting*

*The purpose of the meeting with the recognized neighborhood association is to inform the affected neighborhood association about the proposed development and to receive the preliminary responses and suggestions from the neighborhood association and the member residents.*

*1. Applicants applying for annexations, zone change, comprehensive plan amendments, conditional use, planning commission variances, subdivision, or site plan and design review (excluding minor site plan and design review), general development master plans or detailed development plans applications shall schedule and attend a meeting with the city-recognized neighborhood association in whose territory the application is proposed. Although not required for other projects than those identified above, a meeting with the neighborhood association is highly recommended.*

*2. The applicant shall send, by certified mail, return receipt requested letter to the chairperson of the neighborhood association and the citizen involvement committee describing the proposed project. Other communication methods may be used if approved by the neighborhood association.*

*3. A meeting shall be scheduled within thirty days of the notice. A meeting may be scheduled later than thirty days if by mutual agreement of the applicant and the neighborhood association. If the neighborhood association does not want to, or cannot meet within thirty days, the applicant shall hold their own meeting after six p.m. or on the weekend, with notice to the neighborhood association, citizen involvement committee, and all property owners within three hundred feet. If the applicant holds their own meeting, a copy of the certified letter requesting a neighborhood association meeting shall be required for a complete application. The meeting held by the applicant shall be held within the boundaries of the neighborhood association or in a city facility.*

*4. If the neighborhood association is not currently recognized by the city, is inactive, or does not exist, the applicant shall request a meeting with the citizen involvement committee.*

*5. To show compliance with this section, the applicant shall submit a sign-in sheet of meeting attendees, a summary of issues discussed, and letter from the neighborhood association or citizen involvement committee indicating that a neighborhood meeting was held. If the applicant held a separately noticed meeting, the applicant shall submit a copy*

*of the meeting flyer, a sign in sheet of attendees and a summary of issues discussed.*

**Finding: Complies as Proposed.** A Neighborhood Association Meeting was held on 8/13/19. The applicant stated "The Association allowed us to call in and participate in the meeting. During the meeting we outlined our proposal to the Association to replace the existing menu boards with new menu boards that utilize digital technology. The Association was receptive to the change as the new menu boards provide the same information on a smaller size board and the illumination is less than the current levels. The Association overwhelmingly approved the proposal."

#### **CHAPTER 17.60 - VARIANCES**

*Sign Variance criteria is found in Chapter 15.28 rather than Chapter 17.60.*

#### **CONCLUSION AND DECISION:**

Based on the analysis and findings as described above, Staff concludes that the proposed development located at 1450 Molalla Avenue can meet the requirements as described in the Oregon City Municipal Code by complying with the Conditions of Approval provided in this report. Therefore, the Community Development Director recommends approval with conditions, based upon the findings and exhibits contained in this staff report.

#### **EXHIBITS:**

1. Vicinity Map
2. Applicant's Narrative and Plans (On File)
3. Public Comments
4. Map of mitigation tree planting locations